

APPEAL NO. 010025

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 30, 2000, a hearing was held. The hearing officer decided that the appellant (claimant) had not incurred an injury in the course and scope of his employment on _____, and that he therefore had no disability. The claimant appealed, asserting that the hearing officer's determinations that he did not sustain a compensable injury and was not disabled are against the great weight of the evidence. The respondent (carrier) responded that the hearing officer's determinations were correct and that the hearing officer's decision and order should be affirmed.

DECISION

We affirm the decision and order of the hearing officer.

There was conflicting evidence adduced during the hearing. While there is evidence that the claimant did have some right knee pain after _____, there is other evidence that that knee pain was caused by a _____ injury, for which the claimant had surgery. The carrier's doctor opined that, when comparing an MRI done on February 21, 1999, to one done on April 25, 2000, the April MRI does not show a new injury, i.e., it shows nothing to indicate an additional trauma on _____, but rather shows natural post-operative status in the claimant's knee. The claimant's treating doctor disagreed.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). This is equally true of both lay and expert witness testimony. See Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.). Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his.

The hearing officer's decision and order are affirmed.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge